

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LEE D. WEST and LYNN M. WEST,)	
)	
Plaintiffs)	
)	
v.)	No. 08 C 2154
)	
COPIAGUE FUNDING CORPORATION,)	Hon. Robert W. Gettleman
et al.,)	
)	
Defendants.)	

DEFENDANTS' MOTION TO DISMISS

Defendants Homecomings Financial, LLC (f/k/a Homecomings Financial Network, Inc.) (“Homecomings”), Aurora Loan Services, LLC (“Aurora”), and Mortgage Electronic Systems, Inc. (“Mortgage Electronic”) (collectively, the “Moving Parties”), by their counsel, J. Matthew Goodin and Christine E. Obrochta (Locke Lord Bissell & Liddell, LLP), respectfully move this Court for an order dismissing Plaintiffs’ Amended Complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure and state as follows:

FACTUAL BACKGROUND

On September 15, 2006, Plaintiffs closed on two mortgage loan transactions—a “first-lien loan” and a “second-lien loan.” (Amended Complaint (“Compl.”), Docket No. 18, ¶¶ 26-27, 37 and Exs. E-O).¹ Defendant Copiague Funding Corporation, d/b/a South Shore Mortgage Company (“Copiague”), was Plaintiffs’ mortgage broker in connection with the loan

¹ The exhibits originally filed with Plaintiff’s Amended Complaint were virtually illegible. Plaintiffs requested, and the Court granted, leave to re-file the exhibits separately. References herein to the exhibits are to the copies separately filed on July 22, 2008 [Docket No. 25].

transactions. (*Id.* ¶¶ 96-97; Ex. C). Homecomings was the creditor identified in the mortgage loan documents. (*Id.*).

On or about April 14, 2008, Homecomings received a letter from Plaintiffs' counsel dated April 10, 2008, purporting to serve as a Notice of Rescission for the two mortgage loan transactions. (*Id.* Ex. Q). The Notice of Rescission stated that the borrowers were electing to rescind due to alleged "noncompliance with the Truth in Lending Act," 15 U.S.C. §§ 1601, *et seq.* ("TILA"). (*Id.*).

On April 16, 2008—just six days after the Notice of Rescission was dispatched—Plaintiffs initiated this action asserting claims for, among other forms of relief, rescission of the subject loans, statutory damages, actual damages, and attorneys fees and costs, pursuant to sections 1635 and 1640 of TILA. (Original Complaint, Docket No. 1).

On April 30, 2008—within twenty days of the date counsel *dispatched* the Notice of Rescission—Defendants' counsel delivered a letter to Plaintiffs' counsel (a) acknowledging receipt of Plaintiffs' Notice, (b) disputing Plaintiffs' entitlement to rescind but agreeing to rescind nevertheless, subject to tender of amounts set forth in the letter in accordance with TILA, and (c) enclosing account histories so that Plaintiffs' counsel could confirm the required tender amounts. (See counsel's April 30, 2008 letter attached hereto as Exhibit 1).² To date, Plaintiffs have not tendered amounts necessary to complete the rescission of their loans, despite more than three months having passed since they issued their Notice and Homecomings acceded to their request. Plaintiffs' failure to tender, or even identify a date by which they will tender, strongly suggests that Plaintiffs are simply unable to do so.

² Counsel's April 30 letter also noted Defendants' objection to Plaintiffs' commencement of this action less than one week after the Notice of Rescission was sent and demanded immediate dismissal of the lawsuit pursuant to Rule 11 of the Federal Rules of Civil Procedure.

ARGUMENT³

I. APPLICABLE STANDARDS.

The Supreme Court recently ruled that a plaintiff must state a plausible claim and allege sufficient facts to support the allegations in the complaint in order to avoid dismissal under Rule 12(b)(6). *Bell Atlantic Corp. v. Twombly*, --- U.S. ----, 127 S. Ct. 1955, 1965 (2007). The Seventh Circuit has interpreted the *Twombly* decision as imposing two hurdles on a plaintiff: “First, the complaint must describe the claim in sufficient detail to give the defendant fair notice of what the claim is and the grounds upon which it rests. Second, its allegations must plausibly suggest that the plaintiff has a right to relief, raising that possibility above a speculative level; if they do not, the plaintiff pleads itself out of court.” *E.E.O.C. v. Concentra Health Services, Inc.*, 496 F.3d 773, 776 (7th Cir. 2007) (citing *Twombly*, 127 S. Ct. at 1965, 1973 n.14) (internal quotations omitted).

Rule 12(b)(1) provides a vehicle for a party to dismiss an action for lack of subject matter jurisdiction. Plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing a basis for jurisdiction. *Lujan v. Defenders of Wildlife*, 112 S. Ct. 2130, 2136, 504 U.S. 555 (1992); *United Phosphorus, Ltd. v. Angus Chem. Co.*, 322 F.3d 942, 946 (7th Cir. 2003). In ruling on a motion under Rule 12(b)(1), the court must accept as true all well-pled factual allegations and draw reasonable inferences in favor of

³ On July 22, 2008, Plaintiffs filed a Notice of Dismissal pursuant to Rule 41(a) of the Federal Rules of Civil Procedure and dismissed Counts II-IV of the Amended Complaint. (See Docket No. 24). Plaintiffs’ Rule 41(a) Notice also withdrew all putative class allegations and factual allegations contained in paragraphs 36, 39, and 53-56 of the Amended Complaint. Accordingly, this Motion addresses only those Counts of the Amended Complaint that remain—Count I against the Moving Parties and Counts V-VI against Homecomings.

the plaintiff, *Sladek v. Bell Sys. Mgmt. Pension Plan*, 880 F.2d 972, 975 (7th Cir. 1989), but the court is also free to weigh evidence to determine whether jurisdiction has indeed been established. *Capitol Leasing Co. v. FDIC*, 999 F.2d 188, 191 (7th Cir. 1993). Moreover, when “standing is challenged as a factual matter, the plaintiff must come forward with ‘competent proof’ - that is a showing by a preponderance of the evidence that standing exists.” *Lee v. City of Chicago*, 330 F.3d 456, 468 (7th Cir. 2003). “If a plaintiff cannot establish standing to sue, relief from this court is not possible, and dismissal under 12(b)(1) is the appropriate disposition.” *Am. Fed. of Gov. Employees, Local 2119 v. Cohen*, 171 F.3d 460, 465 (7th Cir. 1999).

II. PLAINTIFFS’ CLAIMS FOR DAMAGES AND ATTORNEYS’ FEES UNDER TILA (COUNT I) ARE TIME BARRED OR OTHERWISE PRECLUDED AND SHOULD BE DISMISSED.

In Count I of their Amended Complaint, Plaintiffs seek, in addition to rescission of their loans, statutory damages, actual damages, and attorneys’ fees and costs pursuant to section 1640 of TILA. However, such claims are either time-barred or precluded as a matter of law by Plaintiffs’ own affirmative allegations, and should be dismissed pursuant to Rule 12(b)(6).

Claims for damages under TILA must be brought within one year of the alleged violation. *See* 28 U.S.C. § 1640(e). The date of any alleged TILA disclosure violation in the context of a mortgage transaction is the date the transaction is consummated or “closed”—the date the borrower executes and becomes obligated under the loan documents *See* 12 C.F.R. § 226.2(a)(13); *Streit v. Fireside Chrysler-Plymouth, Inc.*, 697 F.2d 193, 196 (7th Cir. 1983); *Dowdy v. First Metro. Mortg. Co.*, No. 01 C 7211, 2002 WL 745851, *2. (N.D. Ill., Jan. 29, 2002) (Holderman, J.). Actions seeking relief under section 1640 of TILA brought more than one year after the loan transaction closed are time barred unless the complaint adequately alleges

failure to rescind after a valid notice of rescission as an independent violation. *See Greer v. Bank One*, No. 01 C 7352, 2002 WL 1732366, *2-3 (N.D. Ill. July 25, 2002) (Andersen, J.); *see also Dowdy*, 2002 WL 745851 at *2.

In this case, Plaintiffs' loan transactions closed more than one year prior to the filing of this action—on September 15, 2006. (Compl. ¶¶ 26-27, 37 and Exs. E-P). Accordingly, any claim predicated on alleged disclosure violations is time barred. Moreover, because Plaintiffs' own allegations and exhibits demonstrate that they commenced this action only six days after issuing their Notice of Rescission and because Homecomings acknowledged and accepted Plaintiffs' Notice of Rescission and began the rescission process within the twenty-day period afforded by TILA, Plaintiffs have not and cannot state a claim for damages or attorneys' fees under TILA as a matter of law. (*See* Compl. Ex. Q; *Ex. I*); *Personius v. HomeAmerican Credit, Inc.*, 234 F. Supp. 2d 817, 819-20 (N.D. Ill. 2002) (Castillo, J.) (dismissing rescission claim where defendant acknowledged and accepted rescission demand and suit was commenced less than twenty days after notice of rescission was tendered); *Jefferson v. Security Pacific Fin'l Serv., Inc.*, 161 F.R.D. 63, 69 (N.D. Ill. 1995) (Castillo, J.) (citing *James v. Home Constr. Co.*, 621 F.2d 727 (5th Cir. 1980)) ("TILA gives the creditor twenty (20) days to act on a rescission claim before the matter can be brought before a court."); *McNinch v. Mortgage Am., Inc.*, 250 B.R. 848, 852 (Bkrtcy. W.D. Pa. 2000) (claim for failure to respond to valid rescission notice does not accrue until 20 days after the rescission notice is delivered). Plaintiffs' claims for damages, attorneys' fees, and any other form of relief sought pursuant to section 1640 of TILA should therefore be dismissed with prejudice.

III. PLAINTIFFS’ “CLAIM” FOR RESCISSION UNDER TILA (COUNT I) SHOULD BE DISMISSED BECAUSE THEY LACK STANDING—THE CLAIM WAS NOT RIPE WHEN THE CASE WAS COMMENCED AND IS NOW MOOT.

Plaintiffs “claim” for rescission of the loan transactions pursuant to section 1635 of TILA is also defective, and the balance of Count I should therefore be dismissed pursuant to Rule 12(b)(1), because Plaintiffs affirmatively acknowledge that they filed suit before expiration of the twenty-day period afforded to respond to a notice of rescission under TILA. *See Jefferson*, 161 F.R.D. at 69. Thus, Plaintiffs’ purported rescission “claim” was not ripe when the action was commenced, and the Court lacked jurisdiction to decide the issue. *Id.*; *St. John’s United Church of Christ v. City of Chicago*, 502 F.3d 616, 626 (7th Cir. 2007) (“In order to satisfy Article III’s jurisdictional requirements, the requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).”) (internal quotes omitted); *Indiana Right to Life, Inc. v. Shepard*, 507 F.3d 545, (7th Cir. 2007) (“A case or controversy requires a claim that is ripe and a plaintiff who has standing.”).

Similarly, because Homecomings subsequently accepted Plaintiffs’ rescission demand before expiration of the twenty-day period prescribed by TILA, Plaintiffs’ rescission claim is now moot and may not proceed. *Personius*, 234 F. Supp. 2d at 819-20; *Jefferson*, 502 F.3d at 626 (citing *Powell v. McCormack*, 395 U.S. 486, 496, 89 S. Ct. 1944 (1969)) (“[W]hen the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome, the case is (or the claims are) moot and must be dismissed for lack of jurisdiction.”) (internal quotes omitted). The law in this jurisdiction is clear—when a defendant offers to satisfy a plaintiff’s entire demand, there is no dispute to litigate and the case should be terminated. *Rand v. Monsanto Co.*, 926 F.2d 596, 598 (7th Cir. 1991). Plaintiffs may not insist on litigating after a defendant offers to provide all the relief the plaintiff is entitled to recover and the case or

controversy has become moot. *Alliance to End Repression v. City of Chicago*, 820 F.2d 873, 878 (7th Cir. 1987); *Holstein v. City of Chicago*, 803 F. Supp. 205, 209 (N.D. Ill. 1992), *aff'd* 29 F.3d 1145 (7th Cir. 1994).

The court in *Personius* was presented with virtually identical facts. On June 26, 2002, Plaintiffs' counsel sent defendant a letter requesting rescission due to alleged noncompliance with TILA. 234 F. Supp. 2d at 817. Defendant's counsel responded on July 1, 2002, requesting an explanation of the alleged TILA breaches. *Id.* On July 2, 2002, Plaintiffs' counsel faxed a letter detailing the alleged irregularities in each loan transaction that entitled Plaintiffs to rescind the loans. *Id.* On July 3, Plaintiffs filed a lawsuit seeking rescission, statutory damages and attorney fees. *Id.* On July 8, prior to receiving Plaintiffs' complaint and within the twenty-day period afforded by TILA, Defendant agreed to rescind. Judge Castillo granted defendant's motion to dismiss pursuant to Rules 12(b)(1) and 12(b)(6), concluding as follows:

[Defendant] Upland claims that Plaintiffs lack standing to sue because its offer to rescind the loans effectively vitiated any litigable dispute, and thus divested this Court of subject matter jurisdiction. *See Rand v. Monsanto Co.*, 926 F.2d 596, 597-98 (7th Cir. 1991); *Greisz v. Household Bank (Ill.), N.A.*, 176 F.3d 1012, 1015 (7th Cir. 1999). Plaintiffs argue that Upland's offer to rescind is defective because: (1) Upland failed to terminate its security interest in the loans as required by Regulation Z, 12 C.F.R. § 226.23(d)(2); and (2) Upland is prohibited from requiring Plaintiffs to sign a release from liability as a condition of rescission.

We agree with Upland that its pre-suit offer to rescind the loans rendered Plaintiffs' claim for rescission moot. Thus, Plaintiffs lack standing to sue and we do not have jurisdiction to hear the case. *See* U.S. Const. Art. III, § 2; *United States v. Balint*, 201 F.3d 928, 936 (7th Cir. 2000) (recognizing that "a case is moot if there is no possible relief which the court could order that would benefit the party seeking it"). The relief that Plaintiffs sought and was available to them was fulfilled by Upland's agreement to rescind the loans. Plaintiffs' arguments that Upland's offer to rescind was defective does not alter this result.

* * * * *

Although it is true that upon a notice of rescission TILA generally requires that the creditor perform first and unilaterally by returning monies and releasing its security interest, *see* 15 U.S.C. § 1635(b), there is no absolute prohibition against conditioning rescissions on some act by the borrower.

Id. at 819.

In this case, Homecomings has offered to satisfy Plaintiffs' demand for rescission of the subject mortgage loans. It has timely acknowledged Plaintiffs' Notice of Rescission, identified the amounts Plaintiffs are required to tender in order to complete the transaction, and requested a reasonable settlement agreement that memorializes the terms of the transaction. Homecomings has agreed to release its mortgages and terminate Plaintiffs' obligations simultaneously with Plaintiffs' tender of the required amounts. Count I of Plaintiffs' Amended Complaint is therefore moot and should be dismissed.

IV. PLAINTIFFS FAIL TO ALLEGE FACTS SUFFICIENT TO STATE A CLAIM UNDER CROA (COUNT V).

Plaintiffs' claim for alleged violation of the Credit Repair Organizations Act, 15 U.S.C. §§ 1679, *et seq.* ("CROA"), specifically, section 1679b, is factually deficient and should also be dismissed. The entirety of Count V consists of (a) a single, incomplete and non-specific allegation that "Defendants violated CROA by fraudulently inflating and falsifying plaintiffs' [sic] on their loan applications," and (b) a block-quote from section 1679(b) of CROA. This attempt falls well short of the minimum pleading requirements. *See Twombly*, 127 S. Ct. at 1964-65 (the federal pleadings standard "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action."). Moreover, CROA claims predicated in fraud must be pled with the particularity required by Rule 9(b). *See Slack v. Fair ISAAC Corp.*, 390 F. Supp. 2d 906 (N.D. Cal. 2005). Plaintiffs offer no facts whatsoever to demonstrate how "Defendants" violated provisions of CROA, and fail to allege with particularity where and when *Homecomings* made any false statement or counseled another person to make false statements.

Plaintiffs attempt to cure this obvious pleading deficiency with a boilerplate allegation that “Copiague Funding was Homecomings’ agent” in the disputed transaction. (Compl. ¶ 34). But, again, Plaintiffs allege no facts to support this legal conclusion. *See Jones v. ABN AMRO Mortg. Group, Inc.*, 551 F. Supp. 2d 400, 410 (E.D. Pa. 2008) (dismissing RESPA claims against lenders predicated on acts of brokers where plaintiff failed to plead sufficient facts to support a *prima facie* case of common law agency).

Moreover, even if Plaintiffs could plead and prove the existence of an agency relationship, which they cannot, Plaintiff forgets that Homecomings was the lender in the disputed transactions. If Copiague were in fact Homecomings’ agent, and its acts or statements could be imputed to Homecomings, then any such false or misleading statements were made by Homecomings to Homecomings. This cannot possibly constitute a violation of the law. CROA itself provides, in relevant part:

No person may--

(1) make any statement, or counsel or advise any consumer to make any statement, which is untrue or misleading (or which, upon the exercise of reasonable care, should be known by the credit repair organization, officer, employee, agent, or other person to be untrue or misleading) with respect to any consumer’s credit worthiness, credit standing, or credit capacity to--

(A) any consumer reporting agency (as defined in section 1681a(f) of this title); or

(B) any person--

(i) who has extended credit to the consumer; or

(ii) to whom the consumer has applied or is applying for an extension of credit...

15 U.S.C. § 1679b. An examination of the pertinent language shows that there are two references to a “person.” The first reference, in the beginning of the section, generally prohibits a “person” from making false representations about a consumer’s creditworthiness or capacity.

The second reference to “person” relates to whom such false representation is made—a consumer reporting agency or a person to whom the consumer has applied for credit. The statute makes clear that the two “persons” must be different. That is, one person must make a false statement to *another* person. Thus, a person cannot be guilty of violating the statute for making a false statement or representation to itself. Indeed, it is difficult to imagine how a party could make a false representation to itself, or why, if for some reason a party could make a false representation to itself, the law would make such conduct actionable. While creative, this is clearly not how Congress intended the statute to be applied.

Accordingly, Plaintiffs fail to state a claim under CROA and Count V of Plaintiffs’ Amended Complaint should be dismissed.

V. PLAINTIFFS FAIL TO STATE A CLAIM UNDER THE ILLINOIS CONSUMER FRAUD ACT (COUNT VI).

Plaintiffs’ claim for alleged violation of the Illinois Consumer Fraud and Deceptive Practices Act, 815 ILCS 505, *et. seq.* (“ICFA”), is also deficient and should be dismissed. To state a claim under the ICFA, one must sufficiently plead the following elements: (1) a deceptive act or practice by the defendant; (2) the defendant’s intent that the plaintiff rely on the deception; (3) that the deception occur in a course of conduct involving trade and commerce; and (4) actual damage to the plaintiff; (5) proximately caused by the deception. *See Geschke v. Air Force Ass’n*, 425 F.3d 337, 345 (7th Cir. 2005); *DeLeon v. Beneficial Constr. Co.*, 55 F. Supp. 2d 819, 825 (N.D. Ill. 1999). Plaintiffs do little more than recite the formulaic elements of an ICFA claim in Count VI of their Amended Complaint. Plaintiffs assert a variety of conclusory allegations without providing factual support. Defendants broadly allege that “Defendants” engaged in “practices [that] were deceptive and unfair;” that “defendants engaged in such conduct with the intent that plaintiffs rely on their deception;” and that “Plaintiffs was [sic]

damaged as a result.” But mere “labels and conclusions, and a formulaic recitation of the elements of a cause of action” are insufficient to meet the federal pleadings standard. *Twombly*, 127 S. Ct. at 1964-65.

Not only do Plaintiffs’ claims fail to satisfy the general pleading standard imposed by *Twombly*, they fall exceedingly short of the heightened pleading requirement of Rule 9(b). “Federal Rule of Civil Procedure 9(b) requires that the circumstances constituting fraud shall be stated with particularity.” *Uni*Quality Inc. v. Infotronx, Inc.*, 974 F.2d 918, 923 (7th Cir. 1992). The rule generally requires a plaintiff to plead the “who, what, when, and where of the alleged fraud.” *Id.* “A complaint alleging a violation of the [ICFA] must be pled with the same particularity and specificity as that required under common law fraud under Rule 9(b).” *Costa v. Mauro Chevrolet, Inc.*, 390 F. Supp. 2d 720, 731 (N.D. Ill. 2005). When the alleged fraud is purportedly committed by an agent, general allegations of agency do not satisfy the particularity requirement. *Lachmund v. ADM Investor Services, Inc.*, 191 F.3d 777, 783 (7th Cir. 1999); *Morequity, Inc. v. Naeem*, 118 F. Supp. 2d 885, 895-96 (N.D. Ill. 2000).

Plaintiffs’ ICFA claim is predicated on allegations of fraud purportedly committed by Copiague. Plaintiffs make no allegation that Homecomings made any misstatement to them. Indeed, Plaintiffs rely entirely upon a generic allegation that Copiague was Homecomings’ agent, but state no facts to support this legal conclusion. *See Jones*, 551 F. Supp. 2d at 410. This kind of conclusory allegation is certainly not sufficient to satisfy the heightened particularity requirement of Rule 9(b).

In *Morequity v. Naeem*, the plaintiff brought claims of fraud and a violation of the ICFA against the defendant based upon alleged misrepresentations by a purported agent. 118 F. Supp. 2d 885, 895 (N.D. Ill. 2000). There were no facts alleged to support the agency relationship

other than the conclusory assertion that the party making the misrepresentation was an agent of the defendant. The court held that general allegations of agency do not contain the requisite particularity to show that the defendant had vest actual or apparent authority in the agent to act on its behalf. *Id.* at 895-96. Just like the complaint in *Morequity*, the complaint against Homecomings in this case is predicted on the empty assertion that Copiague was Homecomings' agent. There are, however, no facts offered to support that conclusion. As a result, the claims do not satisfy the specificity and particularity requirements of Rule 9(b), and Plaintiffs' ICFA claim against Homecomings must be dismissed.

CONCLUSION

For each of the foregoing reasons, Defendants Homecomings Financial, LLC (f/k/a Homecomings Financial Network, Inc.), Aurora Loan Services, LLC, and Mortgage Electronic Systems, Inc., respectfully request that this Court enter an order dismissing Plaintiffs' Complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, and grant such further relief as this Court deems just and appropriate.

Dated: August 11, 2008

**HEMCOMINGS FINANCIAL, LLC,
AURORA LOAN SERVICES, and
MORTGAGE ELECTRONIC SYSTEMS, INC.**

By: /s/ J. Matthew Goodin
One of Their Attorneys

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CERTIFICATE OF SERVICE

I, J. Matthew Goodin, certify that on August 11, 2008, I had a true copy of the preceding document filed with the Court and served via the court's electronic filing system.

/s/ J. Matthew Goodin

EXHIBIT 1



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April 30, 2008

VIA HAND DELIVERY

Mr. Al Hofeld, Jr.
Law Offices of Al Hofeld, Jr., LLC
208 South LaSalle Street
Suite 1650
Chicago, Illinois 60604
al@alhofeldlaw.com

Re: *West v. Copiague Funding, et al.*, Case No. 08 C 2154 (N.D. Ill.)

Dear Al:

As indicated in my previous letter of April 22, 2008, we represent the Defendants in the above-referenced lawsuit and in connection with your clients' demand for rescission of the mortgage loans referenced in your April 10, 2008 correspondence to our clients.

As an initial matter, I would like to address your clients' lawsuit, which was initiated on April 16, 2008—just six days after a written demand for rescission was made, or two weeks before the 20-day time period afforded creditors to begin the rescission process under Section 1635(b) of Truth in Lending Act ("TILA") was to expire. The lawsuit is premature, constitutes a patent violation of Rule 11 of the Federal Rules of Civil Procedure, and should be dismissed immediately. There is no basis for the filing of a lawsuit until a demand for rescission has been made and a creditor has failed to take steps to initiate the rescission process within the required time period.

With regard to the demand for rescission itself, our clients deny that any violation of TILA occurred in connection with the transactions at issue. However, in order to avoid the expense of litigation, they are willing to rescind the loans in question. Please be advised that the rescission process has been initiated per your clients' request. In order to complete rescission of the first mortgage loan in the original principal amount of \$300,000.00, your clients must tender the following amounts to Homecomings Financial, LLC ("Homecomings"), together with an executed copy of a settlement agreement and release:

FIRST MORTGAGE LOAN		
Original principal balance:		\$300,000.00
Principal paid:		\$0.00
Interest paid:	\$20,676.28	

Atlanta, Austin, Boston, Chicago, Dallas, Houston, London, Los Angeles, New Orleans, New York, Sacramento, Washington DC

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EXHIBIT 1

Mr. Al Hofeld, Jr.
 April 30, 2008
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Closing costs:	\$2,860.43	
Total paid by borrower:		<u>\$23,536.71</u>
Total Amount to Rescind		<u>\$276,463.29</u>

With regard to the second mortgage loan in the original principal amount of \$15,000.00, we are in the process of confirming payment activity on the loan and will provide an up-to-date rescission calculation shortly. However, the following reflects an *estimated* calculation based on information currently available to us:

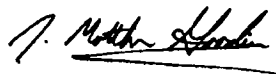
SECOND MORTGAGE LOAN		
Original principal balance:		\$15,000.00
Principal paid:		\$60.34
Interest paid:	\$2,369.88	
Closing costs:	\$1,102.06	
Total paid by borrower:		<u>\$3,471.94</u>
Total Amount to Rescind:		<u>\$11,467.72</u>

I am enclosing a copy of the account histories for the loans so that you may verify the computations above. Additional documents relating to the second mortgage will follow. You are already in possession of the HUD-1s, which reflect the closing costs your clients paid in connection with each loan.

Please confirm that we are in agreement as to the rescission amounts and that your clients intend to move forward with the rescission as soon as possible. Upon tender of the required amounts, along with the referenced settlement agreement and release, our clients will consummate the termination of their security interests. Please let us know if you have any objection to this procedure for completing the rescission of your clients' loans.

Very truly yours,

LOCKE LORD BISSELL & LIDDELL LLP



J. Matthew Goodin

JMG:k

Enclosures

bcc: Mr. David Hagens via e-mail
 Ms. Christine Buen via e-mail
 Mr. Thomas Cunningham via e-mail

Homecomings Financial, LLC
P.O. Box 205

PAGE 1
DATE 04/22/08

Waterloo

IA 50704

HISTORY FOR ACCOUNT 7470247396

----- MAIL ----- PROPERTY -----

LEE D WEST
LYNN M WEST
708 OAKWOOD DR

708 OAKWOOD DR

WESTMONT

IL 60559

WESTMONT

IL 60559

----- DATES -----		----- CURRENT BALANCES -----		----- UNCOLLECTED -----	
PAID TO	03/01/08	PRINCIPAL	0.00	LATE CHARGES	0.00
NEXT DUE	04/01/08	ESCROW	0.00	OPTIONAL INS	0.00
LAST PMT	03/22/08	UNAPPLIED FUND	0.00	INTEREST	0.00
AUDIT DT	09/22/06	UNAPPLIED CODES		FEES	0.00
		BUYDOWN FUND	0.00	----- YEAR TO DATE -----	
LAST ACTIVITY	BUYDOWN CODE			INTEREST	6390.97
04/01/08				TAXES	0.00

POST	TRN	DUE	TRANSACTION	PRINCIPAL	INTEREST	ESCROW
DATE	CDE	DATE	AMOUNT	PAID	PAID	PAID
092206	AA	100106	.00	.00	271.23	.00
			BAL AFTER	300000.00		00.00
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
092606	SR	100106	1289.85	.00	.00	1289.85
			BAL AFTER	300000.00		1289.85
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
102606	RP	110106	1503.90	323.95	750.00	429.95
			BAL AFTER	299676.05		1719.80
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
103106	PRO	100106	-1503.90	-323.95	-750.00	-429.95
			BAL AFTER	300000.00		1289.85
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
103106	AA	100106	.00	.00	.00	-1289.85
			BAL AFTER	300000.00		00.00
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
103106	AA	100106	.00	.00	.00	1289.85
			BAL AFTER	300000.00		1289.85
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
103106	RP	110106	1503.90	323.95	750.00	429.95
			BAL AFTER	299676.05		1719.80
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
121106	RP	120106	1503.90	-986.32	2060.27	429.95
			BAL AFTER	300662.37		2149.75
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
010307	RP	010107	1503.90	-993.10	2067.05	429.95
LC DATE	010207		BAL AFTER	301655.47		2579.70
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00

SB017578

HISTORY FOR ACCOUNT 7470247396

PAGE 2
DATE 04/22/08

----- MAIL ----- PROPERTY -----

LEE D WEST
LYNN M WEST
708 OAKWOOD DR

708 OAKWOOD DR

WESTMONT

IL 60559

WESTMONT

IL 60559

POST DATE	TRN CDE	DUE DATE	TRANSACTION AMOUNT	PRINCIPAL PAID	INTEREST PAID	ESCROW PAID
020607	RP	020107	1539.72	-1031.35	2105.30	465.77
			BAL AFTER	302686.82		3045.47
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
030507	RP	030107	1539.72	-1038.55	2112.50	465.77
LC DATE		030207	BAL AFTER	303725.37		3511.24
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
033007	RP	040107	1539.72	-1045.80	2119.75	465.77
			BAL AFTER	304771.17		3977.01
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
042607	M20	040107	-470.00	.00	.00	-470.00
			BAL AFTER	304771.17		3507.01
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
043007	RP	050107	1539.72	-1084.85	2158.80	465.77
LC DATE		042807	BAL AFTER	305856.02		3972.78
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
050807	E90	050107	-2480.97 PAYEE = 0022.000000		.00	-2480.97
			BAL AFTER	305856.02		1491.81
T:32687	/B:001		OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
061407	AP	060107	1539.72	-1092.53	2166.48	465.77
REF NUMBER			000000000000 DESC			
			BAL AFTER	306948.55		1957.58
T:00607	E/B:001		OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
061407	FB	060107	7.50 171 SPEEDPAY FEE			
T:00607	/B:000					
061407	FEA	060107	7.50 171 SPEEDPAY FEE			
			000000000000			
T:00607	/B:001					
071607	AP	070107	1539.72	-1100.27	2174.22	465.77
REF NUMBER			000000000000 DESC			
LC DATE		071407	BAL AFTER	308048.82		2423.35
T:00607	E/B:001			00.00		00.00
071607	FB	070107	7.50 171 SPEEDPAY FEE			
LC DATE		071407				
T:00607	/B:000					

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----- MAIL ----- PROPERTY -----

LEE D WEST
LYNN M WEST
708 OAKWOOD DR

708 OAKWOOD DR

WESTMONT

IL 60559

WESTMONT

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POST DATE	TRN CDE	DUE DATE	TRANSACTION AMOUNT	PRINCIPAL PAID	INTEREST PAID	ESCROW PAID
071607	FEA	070107	7.50 171 SPEEDPAY FEE			
	REF NUMBER		000000000000 DESC			
	LC DATE	071407				
T:00607	/B:001					
072307	SRA	070107	44.51	.00	.00	44.51
			SG0LNJBVR18			
	LC DATE	072107	BAL AFTER	308048.82		2467.86
T:00405	P/B:001			00.00		00.00
080307	E90	070107	-2480.97 PAYEE = 0022.00000		.00	-2480.97
			BAL AFTER	308048.82		-13.11
T:32687	/B:001			00.00		00.00
081007	GRU	000000	000000 GRACE UNAP AMT:		.00	
	REF NUMBER		SG0LS7L2AHSV DESC			
081007	AP	080107	1539.72	-1108.06	2182.01	465.77
			BAL AFTER	309156.88		452.66
T:00330	K/B:001			00.00		00.00
082707	AMC	090107	INTEREST RATE CHG OLD	8.50000	NEW	8.37500
	REF NUMBER		SG0M0EICQTE6 DESC			
			BAL AFTER	309156.88		452.66
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
082707	AP	090107	1526.60	-1115.91	2189.86	452.65
			BAL AFTER	310272.79		905.31
T:00330	K/B:001		OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
092807	AP	100107	1526.60	-1091.50	2165.45	452.65
	REF NUMBER		SG0M8OGGLVST DESC			
			BAL AFTER	311364.29		1357.96
T:00330	K/B:001		OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
103007	RT	100107	-1357.96	.00	.00	-1357.96
	LC DATE	100107	BAL AFTER	311364.29		00.00
T:22023	/B:000		OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00

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----- MAIL ----- PROPERTY -----

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POST DATE	TRN CDE	DUE DATE	TRANSACTION AMOUNT	PRINCIPAL PAID	INTEREST PAID	ESCROW PAID
103007	ITR	100107	OLD INV 90412	86 P-BAL	311364.29 INT	.00
			NEW INV 90615	1 PERCENT OWNED	.0000 ACTION CD 000	
			BAL AFTER	311364.29		00.00
T:22023	/B:000		OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
103007	PT	100107	1357.96	.00	.00	1357.96
	LC DATE	100107	BAL AFTER	311364.29		1357.96
T:22023	/B:000		OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
111607	AP	110107	1526.60	-1099.11	2173.06	452.65
	REF NUMBER		000000000000 DESC			
			BAL AFTER	312463.40		1810.61
T:00607	E/B:001		OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
111607	FB	110107	7.50 171 SPEEDPAY FEE			
			SG0MKSQGH18			
T:00607	/B:000					
111607	FEA	110107	7.50 171 SPEEDPAY FEE			
	REF NUMBER		000000000000 DESC			
T:00607	/B:001					
120807	AMC	120107	INTEREST RATE CHG OLD	8.37500	NEW	8.25000
	REF NUMBER		SG0MQBAQ0RKS DESC			
			BAL AFTER	312463.40		1810.61
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
120807	AP	120107	1526.60	-1106.78	2180.73	452.65
			BAL AFTER	313570.18		2263.26
T:00330	K/B:001		OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
011108	AMC	010108	INTEREST RATE CHG OLD	8.25000	NEW	8.12500
	REF NUMBER		SG0N359G2H9A DESC			
			BAL AFTER	313570.18		2263.26
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00

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----- MAIL ----- PROPERTY -----

LEE D WEST
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POST DATE	TRN CDE	DUE DATE	TRANSACTION AMOUNT	PRINCIPAL PAID	INTEREST PAID	ESCROW PAID
011108	AP	010108	1526.60	-1081.84	2155.79	452.65
			BAL AFTER	314652.02		2715.91
T:00330	K/B:001		OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
021408	RT	010108	-2715.91	.00	.00	-2715.91
	LC DATE	010108	BAL AFTER	314652.02		00.00
T:25102	/B:000		OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
021408	ITR	010108	OLD INV 90615	1 P-BAL	314652.02 INT	.00
			NEW INV 90415	1 PERCENT OWNED	.0000 ACTION CD	000
			BAL AFTER	314652.02		00.00
T:25102	/B:000		OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
021408	PT	010108	2715.91	.00	.00	2715.91
	LC DATE	010108	BAL AFTER	314652.02		2715.91
T:25102	/B:000		OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
030508	UI	020108	.00	.00	.00	.00
			BAL AFTER	314652.02		2715.91
			OPT PREMIUMS	.00	LATE CHARGE PYMT	-53.69*
T:00330	K/B:001		OPTIONAL INS BAL	00.00	LATE CHARGE BAL	-53.69
030508	AMC	020108	INTEREST RATE CHG OLD	8.12500	NEW	8.00000
			BAL AFTER	314652.02		2715.91
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	-53.69
030508	AP	020108	1526.60	-1056.51	2130.46	452.65
			BAL AFTER	315708.53		3168.56
T:00330	K/B:001		OPTIONAL INS BAL	00.00	LATE CHARGE BAL	-53.69
030508	UFU	020108	UNAPPLIED FUNDS (1)	53.69	BALANCE	53.69
	REF NUMBER		SGONGNLM7OV3 DESC			
			BAL AFTER	315708.53		3168.56
T:00330	/B:001		OPTIONAL INS BAL	00.00	LATE CHARGE BAL	-53.69
030508	SWA	020108	53.69	.00	.00	.00
			BAL AFTER	315708.53		3168.56
T:00330	K/B:001		OPTIONAL INS BAL	00.00	LATE CHARGE BAL	-53.69
032208	UI	030108	.00	.00	.00	.00
	REF NUMBER		SGONL0EHVARA DESC			
			BAL AFTER	315708.53		3168.56
			OPT PREMIUMS	.00	LATE CHARGE PYMT	53.69*
T:00330	K/B:001		OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00

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----- MAIL ----- PROPERTY -----

LEE D WEST
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708 OAKWOOD DR

708 OAKWOOD DR

WESTMONT

IL 60559

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POST DATE	TRN CDE	DUE DATE	TRANSACTION AMOUNT	PRINCIPAL PAID	INTEREST PAID	ESCROW PAID
032208	AMC	030108	INTEREST RATE CHG OLD	8.00000	NEW	7.75000
			BAL AFTER	315708.53		3168.56
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
032208	UFU	030108	UNAPPLIED FUNDS (1)	-53.69	BALANCE	0.00
			BAL AFTER	315708.53		3168.56
T:00330	/B:001		OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
032208	AP	030108	1580.29	-1030.77	2104.72	452.65
			BAL AFTER	316739.30		3621.21
			OPT PREMIUMS	.00	LATE CHARGE PYMT	107.38
T:00330	K/B:001		OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
040108	SVT	030108	-3621.21	.00	.00	-3621.21
			BAL AFTER	316739.30		00.00
T:32580	/B:001		OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
040108	SV	030108	.00	-316739.30	.00	.00
			BAL AFTER	00.00		00.00
T:32580	/B:001		OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00

END OF HISTORY

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Homecomings Financial, LLC
P.O. Box 205

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Waterloo IA 50704

HISTORY FOR ACCOUNT 7305459240

----- MAIL ----- PROPERTY -----

LEE WEST

708 OAKWOOD DR

708 OAKWOOD DR

WESTMONT

IL 60559

WESTMONT

IL 60559

----- DATES -----		----- CURRENT BALANCES -----		----- UNCOLLECTED -----	
PAID TO	06/01/07	PRINCIPAL	0.00	LATE CHARGES	0.00
NEXT DUE	07/01/07	ESCROW	0.00	OPTIONAL INS	0.00
LAST PMT	04/28/07	UNAPPLIED FUND	0.00	INTEREST	0.00
AUDIT DT	09/25/06	UNAPPLIED CODES		FEES	0.00
		BUYDOWN FUND	0.00	----- YEAR TO DATE -----	
LAST ACTIVITY	BUYDOWN CODE			INTEREST	0.00
06/01/07				TAXES	0.00

POST	TRN	DUE	TRANSACTION	PRINCIPAL	INTEREST	ESCROW
DATE	CDE	DATE	AMOUNT	PAID	PAID	PAID
102506	RP	110106	126.40	7.34	119.06	.00
			BAL AFTER	14992.66		00.00
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
120806	RP	120106	126.40	7.40	119.00	.00
LC DATE		120706	BAL AFTER	14985.26		00.00
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
121206	AA	120106	.00	.00	43.06	.00
			BAL AFTER	14985.26		00.00
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
010307	RP	010107	126.40	7.45	118.95	.00
LC DATE		010207	BAL AFTER	14977.81		00.00
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
020907	RP	020107	126.40	7.51	118.89	.00
LC DATE		020807	BAL AFTER	14970.30		00.00
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
030507	RP	030107	126.40	7.57	118.83	.00
LC DATE		030207	BAL AFTER	14962.73		00.00
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
030507	RP	040107	126.40	7.63	118.77	.00
LC DATE		030207	BAL AFTER	14955.10		00.00
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
033007	RP	050107	126.40	7.69	118.71	.00
			BAL AFTER	14947.41		00.00
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
043007	RP	060107	126.40	7.75	118.65	.00
LC DATE		042807	BAL AFTER	14939.66		00.00
			OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00

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----- MAIL ----- PROPERTY -----

LEE WEST

708 OAKWOOD DR

708 OAKWOOD DR

WESTMONT

IL 60559

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IL 60559

POST DATE	TRN CDE	DUE DATE	TRANSACTION AMOUNT	PRINCIPAL PAID	INTEREST PAID	ESCROW PAID
060107	SVT	060107	.00	.00	.00	.00
			BAL AFTER	14939.66		00.00
T:32580	/B:001		OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00
060107	SV	060107	.00	-14939.66	.00	.00
			BAL AFTER	00.00		00.00
T:32580	/B:001		OPTIONAL INS BAL	00.00	LATE CHARGE BAL	00.00

END OF HISTORY

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